

AN ACT

relating to electronic transmission of documentation involved in certain insurance transactions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 35.001, Insurance Code, is amended by amending Subdivision (2) and adding Subdivisions (3), (4), and (5) to read as follows:

(2) "Regulated entity" means each insurer, ~~[or other]~~ organization, person, or program regulated by the department, including:

(A) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(B) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(C) a Mexican casualty company;

(D) a domestic or foreign Lloyd's plan;

(E) a domestic or foreign reciprocal or interinsurance exchange;

(F) a domestic or foreign fraternal benefit society;

(G) a domestic or foreign title insurance company;

(H) an attorney's title insurance company;

(I) a stipulated premium company;

- 1 (J) a nonprofit legal service corporation;
- 2 (K) a health maintenance organization;
- 3 (L) a statewide mutual assessment company;
- 4 (M) a local mutual aid association;
- 5 (N) a local mutual burial association;
- 6 (O) an association exempt under Section 887.102;
- 7 (P) a nonprofit hospital, medical, or dental
- 8 service corporation, including a company subject to Chapter 842;
- 9 (Q) a county mutual insurance company; ~~and~~
- 10 (R) a farm mutual insurance company; and
- 11 (S) an agency or agent of an insurer,
- 12 organization, person, or program described by this subdivision.

13 (3) "Deliver by electronic means" means:

14 (A) deliver to an e-mail address at which a party

15 has consented to receive notices, documents, or information; or

16 (B) post on an electronic network or Internet

17 website accessible by an electronic device, including a computer,

18 mobile device, or tablet, and deliver notice of the posting to an

19 e-mail address at which the party has consented to receive notices.

20 (4) "Party" means a recipient, including an applicant,

21 insured, policyholder, enrollee, or annuity contract holder, of a

22 notice or document or of information required as part of an

23 insurance transaction.

24 (5) "Written communication" means a notice or document

25 or other information provided in writing.

26 SECTION 2. Chapter 35, Insurance Code, is amended by

27 amending Section 35.004 and adding Section 35.0045 to read as

1 follows:

2 Sec. 35.004. MINIMUM STANDARDS FOR REGULATED ENTITIES
3 ELECTRONICALLY CONDUCTING BUSINESS WITH CONSUMERS.

4 (a) Subject to Subsection (c), a notice to a party or other
5 written communication with a party required in an insurance
6 transaction or that is to serve as evidence of insurance coverage
7 may be delivered, stored, and presented by electronic means only if
8 the delivery, storage, or presentment complies with Chapter 322,
9 Business & Commerce Code.

10 (b) Delivery of a written communication in compliance with
11 this section is equivalent to any delivery method required by law,
12 including delivery by first class mail, first class mail, postage
13 prepaid, or certified mail.

14 (c) A written communication may be delivered by electronic
15 means to a party by a regulated entity under this section if:

16 (1) the party affirmatively consented to delivery by
17 electronic means and has not withdrawn the consent;

18 (2) the party, before giving consent, is provided with
19 a clear and conspicuous statement informing the party of:

20 (A) any right or option the party may have for the
21 written communication to be provided or made available in paper or
22 another nonelectronic form;

23 (B) the right of the party to withdraw consent
24 under this section and any conditions or consequences imposed if
25 consent is withdrawn;

26 (C) whether the party's consent applies:

27 (i) only to a specific transaction for

1 which the written communication must be given; or

2 (ii) to identified categories of written
3 communications that may be delivered by electronic means during the
4 course of the relationship between the party and the regulated
5 entity;

6 (D) the means, after consent is given, by which a
7 party may obtain a paper copy of a written communication delivered
8 by electronic means; and

9 (E) the procedure a party must follow to:

10 (i) withdraw consent under this section;
11 and

12 (ii) update information needed for the
13 regulated entity to contact the party electronically; and

14 (3) the party:

15 (A) before giving consent, is provided with a
16 statement identifying the hardware and software requirements for
17 the party's access to and retention of a written communication
18 delivered by electronic means; and

19 (B) consents electronically or confirms consent
20 electronically in a manner that reasonably demonstrates that the
21 party can access a written communication in the electronic form
22 used to deliver the communication.

23 (d) After consent of the party is given, in the event a
24 change in the hardware or software requirements to access or retain
25 a written communication delivered by electronic means creates a
26 material risk that the party may not be able to access or retain a
27 subsequent written communication to which the consent applies, the

1 regulated entity shall:

2 (1) provide the party with a statement:

3 (A) identifying the revised hardware and
4 software requirements for access to and retention of a written
5 communication delivered by electronic means; and

6 (B) disclosing the right of the party to withdraw
7 consent without the imposition of any condition or consequence that
8 was not disclosed under Subsection (c)(2)(B); and

9 (2) comply with Subsection (c)(3).

10 (e) This section does not affect requirements for content or
11 timing of any required written communication.

12 (f) If a written communication provided to a party expressly
13 requires verification or acknowledgment of receipt, the written
14 communication may be delivered by electronic means only if the
15 method used provides for verification or acknowledgment of receipt.

16 (g) The legal effectiveness, validity, or enforceability of
17 any contract or policy of insurance executed by a party may not be
18 denied solely due to the failure to obtain electronic consent or
19 confirmation of consent of the party in accordance with Subsection
20 (c)(3)(B).

21 (h) A withdrawal of consent by a party does not affect the
22 legal effectiveness, validity, or enforceability of a written
23 communication delivered by electronic means to the party before the
24 withdrawal of consent is effective. A withdrawal of consent is
25 effective within a reasonable period of time after the date of the
26 receipt by the regulated entity of the withdrawal. Failure by a
27 regulated entity to comply with Subsection (d) may be treated by the

1 party as a withdrawal of consent.

2 (i) If the consent of a party to receive a written
3 communication by electronic means is on file with a regulated
4 entity before September 1, 2013, and if the entity intends to
5 deliver to the party written communications under this section,
6 then before the entity may deliver by electronic means additional
7 written communications, the entity must notify the party of:

8 (1) the written communications that may be delivered
9 by electronic means that were not previously delivered by
10 electronic means; and

11 (2) the party's right to withdraw consent to have
12 written communications delivered by electronic means.

13 (j) Except as otherwise provided by law, an oral
14 communication or a recording of an oral communication may not
15 qualify as a written communication delivered by electronic means
16 for purposes of this chapter.

17 (k) If a signature on a written communication is required by
18 law to be notarized, acknowledged, verified, or made under oath,
19 the requirement is satisfied if the electronic signature of the
20 notary public or other authorized person and the other required
21 information are attached to or logically associated with the
22 signature or written communication.

23 Sec. 35.0045. RULES. [~~(a)~~] The commissioner shall adopt
24 rules necessary to implement and enforce this chapter.

25 ~~[(b) The rules adopted by the commissioner under this~~
26 ~~section must include rules that establish minimum standards with~~
27 ~~which a regulated entity must comply in the entity's electronic~~

1 ~~conduct of business with other regulated entities and consumers.]~~

2 SECTION 3. Chapter 35, Insurance Code, is amended by adding
3 Section 35.005 to read as follows:

4 Sec. 35.005. EXEMPTION FROM CERTAIN FEDERAL LAWS. This
5 chapter modifies, limits, or supersedes the provisions of the
6 federal Electronic Signatures in Global and National Commerce Act
7 (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of
8 that Act (15 U.S.C. Section 7002).

9 SECTION 4. This Act applies only to a written communication
10 that is delivered by electronic means on or after January 1, 2014.
11 A written communication delivered by electronic means before
12 January 1, 2014, is governed by the law as it existed immediately
13 before the effective date of this Act, and that law is continued in
14 effect for that purpose.

15 SECTION 5. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 11, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 22, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendment, on May 17, 2013, by the following vote: Yeas 134, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor